

ARTICLE II. PEDDLERS*

*Editor's note: Ord. No. 10041, § 1, adopted Sept. 20, 2004, amended Art. II in its entirety to read as herein set out. Former Art. II, §§ 7-26--7-40, pertained to similar subject matter, and derived from Ord. No. 4677, § 1, adopted June 27, 1977; Ord. No. 8129, §§ 1, 2, adopted Sept. 27, 1993; Ord. No. 8195, § 1, adopted Jan. 24, 1994.

Sec. 7-26. Definitions.

The term:

- (1) "City property" means all real property owned by the city, except the right-of-way.
- (2) "Director" means the director of the department of finance.
- (3) "Peddler" means a person selling merchandise or food products from a temporary, fixed location by means of a motor vehicle, towed vehicle, pushcart, or apparatus that displays merchandise or food for sale that can be removed on a daily basis and who is not licensed pursuant to another provision of the Tucson Code. Such term does not include a person who is approved to sell merchandise or food within an area approved by the zoning administrator, or other city official designated by the director of Development Services, pursuant to § 3.3.6.3 of the Land Use Code.
- (4) "Peddler operation" means the area designated by the peddler on the site plan required by sections 7-27(b)(5) and (6) as the area in which the peddler will conduct business. Unless such area is physically demarcated at the site, it shall be assumed that, for purposes of measuring the distance between the operation and the nearest residential property, other peddler operation, or right-of-way, the boundary of the operation is the outer edge of the property being occupied by the peddler's personal property or customers' vehicles.
- (5) "Site" means the tax parcel of the property for private property or location or address of the property for city property or right-of-way.
(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04; Ord. No. 10141, § 1, 4-12-05)

Sec. 7-27. License requirements.

- (a) In general. It shall be unlawful for a person to operate as a peddler unless such person has received a license from the director.
- (b) License application. Any person desiring to obtain or renew a peddler's license shall file an application with the director. In renewing a license, the peddler need only update any information that changed since the previous license was issued. Such application shall contain the following information:
 - (1) The full legal name, date of birth, and residence address of the applicant.
 - (2) The address or location where the applicant intends on conducting business. If the applicant is applying for a license for more than one location, each address or location where the applicant intends on conducting business.
 - (3) If the applicant intends on conducting business on private property, notarized authorization from the owner or the owner's agent giving the applicant permission to conduct business at each location. Such authorization shall be on a form provided by the director. If the applicant is

applying for a license for a site on an improved lot that does not show compliance with parking requirements, but is seeking approval of the site pursuant to paragraph (6), the authorization form must indicate the hours of operation of all established businesses on the site. Such form must be updated by the applicant due to any change in the hours of operation of any such business.

(4) If the applicant intends on conducting business on city property, written authorization from the director of the department having control over such property.

(5) If the applicant intends on conducting business on an unimproved lot, a site plan approved by the director of the department of development services showing conformance with the requirements of this article. The plan need not be professionally prepared but shall be drawn showing the dimensions of the site, available parking, location of entrances and exits, and where the peddler's vehicle will be parked. If there are any subsequent changes, a new plan shall be submitted to the director after being approved by the director of the department of development services.

(6) If the applicant intends on conducting business on an improved lot, an amendment to the site plan approved by the director of the department of development services showing conformance with the requirements of this article and the Land Use Code. Such amendment need not be professionally prepared unless otherwise required by the Land Use Code or other applicable city law. The plan must show the dimensions of the site, available parking, location of entrances and exits, and where the peddler's vehicle will be parked. An applicant who otherwise meets the requirements of this paragraph may be approved by the director of development services for operation if the proposed site does not meet parking requirements, but only after all established businesses on the site are closed for business. The license shall be valid only for the times that such businesses are closed. If there are any subsequent changes, a new plan shall be submitted to the director after being approved by the director of the department of development services.

(7) If the applicant intends on conducting business in the right-of-way pursuant to section 7-29(b), written authorization from the director of the department of transportation.

(8) Any conviction of any violation of this article of the applicant occurring in the previous twelve (12) months.

(9) Proof of insurance complying with section 7-28 if operating in the right-of-way pursuant to section 7-29(b) or on city property.

(10) A valid health certificate issued by Pima County if selling prepared food.

(c) Term of license. The license issued pursuant to subsection (b) shall be valid for one (1) year from the date of its issuance.

(d) Multiple peddler license applications. A person may apply for a license for as many locations as meets the requirements of this article at one time, but the applicant shall pay a license fee for each location. In the case of multiple locations licensed under one individual, that individual is responsible for violations of this article at all locations.

(e) Denial of license. A peddler whose license is revoked pursuant to section 7-32 shall not be issued another peddler's license for twelve (12) months after the revocation is final. The director may not issue or renew a peddler license to any person who has been convicted of a violation of any provision of this article within the previous twelve (12) months.

(f) Lost licenses. The fee to replace a lost or stolen license shall be ten dollars (\$10.00).

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04; Ord. No. 10141, § 2, 4-12-05)

Sec. 7-28. Insurance.

Any person applying for a peddler license for a location on city property or the right-of-way pursuant to section 7-29(b) must obtain and show proof of liability insurance in a form and with a company approved by the director against death, damages, or injury, in an amount of not less than one million dollars (\$1,000,000.00). Such policy shall include the city as an additional named insured and shall be primary insurance with respect to any other insurance or self-insurance program of the city. The peddler shall maintain this policy in full force and effect during the term of the license.

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04)

Sec. 7-29. Unlawful activities.

(a) In general. It shall be unlawful for a peddler:

- (1) To fail to maintain the site in a clean manner or provide a trash receptacle;
- (2) To place advertising signs any place other than on the peddler's vehicle;
- (3) Or the peddler's employee to fail to be present at the site during operating hours;
- (4) Except as provided by section 7-31, to operate between the hours of 11:00 p.m. and 6:00 a.m.;
- (5) To fail to remove the vehicle, all equipment, and other personal property from the site after closing;
- (6) To fail to display a current, valid peddler's license in a conspicuous location;
- (7) To operate a generator that violates federal regulations relating to noise or exhaust mufflers;
- (8) To operate outside the boundaries of the peddler's operation; or
- (9) Except as provided in subsection (b), to operate in the right-of-way.

(b) Operation in right-of-way. With approval of the director of the department of transportation, a peddler may operate in the right-of-way in the Downtown or Fourth Avenue Business Zones, as defined in sections 11-36.2(a)(1) and (2).

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04)

Sec. 7-30. Setback requirements.

(a) In general. A peddler may not operate a peddler operation in violation of the setback requirements specified in subsections (b) or (c) and compliance with such requirements shall be shown on the site plans required by sections 7-27(b)(5) and (6).

(b) Setback requirements. A peddler operation shall not locate:

- (1) Within one hundred (100) feet of a residentially zoned property;
- (2) Within one hundred (100) feet of another peddler operation located on the same site, which for private property means the same tax parcel;
- (3) Within one hundred (100) feet of another peddler operation located on city property or right-of-way; or
- (4) Except as provided in subsection (c), within twenty (20) feet of a curb or right-of-way pavement.

(c) Curb setback requirement exception. In the Downtown and Fourth Avenue Business Zones, as defined in sections 11-36.2(a)(1) and (2), a peddler operation shall not locate within four (4) feet of a curb or right-of-way pavement.

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04; Ord. No. 10141, § 3, 4-12-05)

Sec. 7-31. Operating before or after required closing time.

(a) In general. A peddler may operate before or after the time required by section 7-29(4) by complying with the exemption process provided in subsection (b).

(b) Exemption process.

(1) Initial application. A peddler desiring to operate before or after the time required for closing by section 7-29(a)(4) shall apply to the director of the development services department for such authorization, stating the specific times that the peddler desires to operate. If the director determines that the peddler's operation is more than two hundred (200) feet from the nearest residentially zoned property and the peddler has no convictions for violations of this article within the previous twelve (12) months, the director shall grant the request for the time period requested. If the peddler's operation is within one hundred (100) to two hundred (200) feet from the nearest residentially zoned property, the director shall refer the application to the zoning examiner pursuant to paragraph (2).

(2) Application to zoning examiner. After the director has referred the application to the zoning examiner, the examiner shall hold a public hearing on the application. The examiner shall hold the hearing no later than sixty (60) days after receipt of the application. The director of the development services department shall notify the chief of police and all residents and registered neighborhood associations within three hundred (300) feet of the lot lines of the site where the peddler's operation is located if on private property or three hundred (300) feet of the peddler's operation if located on city property or right-of-way. After conducting the public hearing, the examiner shall issue a decision either granting or denying the application within five (5) business days of the hearing. The examiner may grant the application if the examiner determines that the peddler's business is not detrimental to the peace and quiet of the residents affected by the business or to public safety. If the zoning examiner grants the application, the authorization shall state the times in which the peddler is permitted to operate, which may be different from that requested by the peddler. The decision of the zoning examiner is final and may not be appealed. If the application is denied, the peddler may not make a similar application for the same location for twelve (12) months.

(c) Operating during times not authorized. If a peddler is permitted to operate past the time allowed under section 7-29(a)(4), it is unlawful for the peddler to operate before or after the times permitted under subsections (b)(1) or (2).

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04)

Sec. 7-32. License revocation.

(a) Grounds for revocation. The director may revoke the license of any peddler for one or a combination of the following:

(1) The peddler or the peddler's employee is operating in violation of any requirement of this article or article IV of chapter 16, Tucson Code, and has failed or refused to cease and desist from such violation or violations within five (5) days after receiving written notice from the director, law enforcement officer, or city employee with code enforcement authority. If an employee of the peddler is operating the peddler's operation, receipt of the notice by the employee is sufficient.

(2) The peddler or the peddler's employee has been convicted of or found responsible for a violation of this article or article IV of chapter 16, Tucson Code, or A.R.S. § 13-2904 where such violation occurred on the site occupied by the peddler's operation.

(3) The peddler provided false information on the license application.

(b) Revocation procedure.

(1) Notice of revocation; scheduling of hearing. The director shall provide written notice of revocation to the peddler stating the grounds for revocation and the procedures to appeal the revocation. The notice may be personally served or mailed, return receipt requested, to the address provided by the peddler on the application. The revocation becomes final five (5) business days from the date of receipt of the notice by the peddler or five (5) business days from the date the notice is returned to the director as undeliverable unless the peddler files an appeal in city court. A hearing shall be scheduled within fifteen (15) days of receipt of the filing of the appeal before a magistrate or special limited magistrate. If the peddler files an appeal, he or she may continue to operate pending the outcome of the hearing in city court.

(2) Revocation order; appeal. At the conclusion of the hearing, if the magistrate or special limited magistrate finds that the grounds for revocation have been established by a preponderance of the evidence, the magistrate shall order the license revoked. Either the city or the peddler may appeal the ruling to superior court in accordance with the Superior Court Rules of Appellate Procedure-Civil. If the peddler's license is revoked and the peddler appeals to superior court, the peddler may not operate unless and until such time as the superior court orders the license reinstated or otherwise authorizes the peddler to operate.

(c) Reapplication prohibited. If a peddler's license is revoked pursuant to this section, the licensee may not reapply for a peddler's license for twelve (12) months following the effective date of the revocation.

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04)

Sec. 7-33. Violations and penalties.

The penalty for a violation of this article shall be as follows:

(1) The penalties under this section are cumulative and the enforcing officer may proceed under one (1) or more such penalty.

(2) Any peddler or an employee of a peddler who commits, causes, permits, facilitates, or aids or abets any violation of, or who fails to perform any act or duty required by, this Article is responsible for a civil infraction and is subject to a civil sanction of not less than one hundred dollars (\$100.00) nor more than two thousand five hundred dollars (\$2,500.00).

(3) Any peddler or an employee of a peddler who commits, causes, permits, facilitates, or aids or abets any violation of, or who fails to perform any act or duty required by, this article is guilty of a class one misdemeanor.

(4) Each day any violation of any provision of this article or the failure to perform any act or duty required by this article exists shall constitute a separate violation or offense.

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04)

Sec. 7-34. Enforcement authority.

Any law enforcement officer or any other employee of the city with the authority to issue civil infraction citations may enforce the provisions of this article. This section is not intended to create or expand the authority of any department to perform acts that are otherwise prohibited by law.

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04)

Sec. 7-35. Jurisdiction of court.

(a) Jurisdiction of all proceedings to enforce the provisions of this chapter shall be in the city court of the city.

(b) Civil infraction proceedings to enforce this chapter may be adjudicated by a magistrate or a special limited magistrate.

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04)

Sec. 7-36. Commencement of civil infraction proceedings.

Any civil infraction proceedings to enforce the provisions of this chapter shall be commenced and summons shall be issued in accordance with the procedures set forth in Arizona Revised Statutes, city ordinance, or as provided in the Local Rules of Practice and Procedure-City Court-City of Tucson. If the city is unable to personally serve the complaint, the complaint may be served in the same manner prescribed for alternative methods of service by the Arizona Rules of Civil Procedure or by certified or registered mail, return receipt requested.

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04)

Sec. 7-37. Appeal of court decision.

Any party may appeal the judgment of city court to the superior court. Appeals from civil infraction proceedings shall be in accordance with the Superior Court Rules of Appellate Procedure-Civil. Appeals from criminal proceedings shall be in accordance with the Superior Court Rules of Appellate Procedure-Criminal.

(Ord. No. 10041, § 1, 9-20-04; Ord. No. 10054, § 1, 9-27-04)

Secs. 7-38--7-61. Reserved.